

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, J.  
Ghulam Mustafa Mughal, J.

1. Civil Appeal No. 152 of 2017  
(PLA Filed on 14.12.2016)

1. Muhammad Irshad, Assistant Engineer B-17, Highway Division Bagh, Azad Kashmir.
2. Zaffar-ul-Haq Kiani, Assistant Engineer B-17, Public Health Engineering Sub-Division Kahuta, Azad Kashmir.
3. Arshad Javed Kazafi, Deputy Director B-18, MDHA, Dam Mangla Housing Authority Mirpur, Azad Kashmir.
4. Qazi Saleem Ahmed, Assistant Engineer B-17, Highway Division Sudhnooti, Azad Kashmir.
5. Abid Hussain Awan, Assistant Engineer B-17 Public Health Engineering Muzaffarabad, Azad Kashmir.
6. Chaudhary Muhammad Shoukat, Assistant Engineer B-17, Highways Division Neelum Azad Kashmir.
7. Shafique Mehmood Qureshi, Assistant Engineer B-17, office Chief Engineer Building (North), Muzaffarabad, Azad Kashmir.
8. Asif Asad-Ullah, Assistant Engineer B-17, Highways Division Rawalakot, Azad Kashmir.
9. Shoukat Ali, Assistant Engineer B-17, Highways Division Sudhnooti, Azad Kashmir.

.... APPELLANTS

**VERSUS**

1. Sajjad Ahmed s/o Muhammad Siddique r/o Domunda Sangwall Khuiratta, Tehsil and District Kotli, Azad Kashmir.
2. Khurrm Maqsood s/o Maqsood Ahmed Awan, r/o Chella Tehsil and District Muzaffarabad, Azad Kashmir.
3. Syd Imran Ali Shah s/o Syed Azad Hussain Shah r/o Subri, Tehsil and District Muzaffarabad, Azad Kashmir.
4. Naeem Ahmed s/o Noor Muhammad r/o Bhial (Bttali) Khuiratta, Tehsil and District Kotli, Azad Kashmir.
5. Muhammad Liaqat s/o Jan Muhammad r/o Palain, Tehsil Sehnsa District Kotli, Azad Kashmir.
6. Adnan Ali Kasher s/o Muhammad Bashir r/o Khuratta, Tehsil and District Kotli, Azad Kashmir.
7. Muhammad Asim s/o Mushtaq Ahmed r/o Gorian Sukh Chainpur, Tehsil and District Mirpur, Azad Kashmir.
8. Waseem Raza r/o village Hazari, Tehsil Samahni, District Bhimber, Azad Kashmir.
9. Qadeer Ahmed r/o Bandala Cantt. Tehsil Samahni, District Bhimber, Azad Kashmir.
10. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary, New Secretariat Muzaffarabad.
11. Secretary Services and General Administration Department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
12. Secretary Communication and Works, Azad Govt. of the State of Jammu & Kashmir, New Secretariat Muzaffarabad.
13. Secretary Physical Planning and Housing, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
14. Chief Engineer, Highways South, Azad Jammu & Kashmir, Muzaffarabad.
15. Chief Engineer, Public Health Department, Azad Jammu & Kashmir, Muzaffarabad.
16. Chief Engineer Highways North, Azad Jammu & Kashmir, Muzaffarabad.

17. Chief Engineer Housing and Physical Planning, Azad Jammu & Kashmir, Muzaffarabad.
18. Additional Chief Secretary Planning and development department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
19. Pakistan Engineering Council through its Secretary/Registrar, Atta Turk Avenue East G-5/2, Islamabad.
20. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 30.11.2016 in Writ Petition No. 468 of 2009)

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FOR THE APPELLANTS: Barrister Humayun Nawaz Khan, Advocate.

FOR THE RESPONDENTS: Raja Muhammad Hanif Khan, Sardar Muhammad Habib Zia, Muhammad Maqsood Sulehria, Advocates and Raza Ali Khan, Advocate General.

2. Civil Appeal No. 251 of 2017  
(PLA Filed on 9.1.2017))

1. Ishtiaq Ahmed Qureshi, Assistant Engineer, attached at Secretariat Communication and Works (C&W), Muzaffarabad.
2. Kh. Muhammad Iqbal, Deputy Director Mechanical office of the Superintending Engineer, Highways Circle Muzaffarabad.
3. Ch. Muneer Ahmed, Assistant Engineer, attached at Secretariat C&W, Muzaffarabad.

4. Inhamullah Nadeem, Deputy Director (Work) MDA, Mirpur.
  5. Aftab Ahmed Kiani, Assistant Engineer, Highways, Hattian Bala.
  6. Ch. Muhammad Saghir, Assistant Engineer, attached at office of the Chief Engineer Highways (North), Muzaffarabad.
  7. Muhammad Altaf Awan, Assistant Engineer, Highways Sub Division, Muzaffarabad.
  8. Javed Anwar Abbasi, Assistant Engineer Highways Bagh, Sub Division Dhirkot.
  9. Wajid Abbais, Assistant Engineer, Highways Division Haveli (Kahutta), Azad Kashmir.
  10. Ishtiaq Ahmed, Assistant Engineer, Highways Division Rawalakot, Sub Division Abbaspur.
  11. Mubarak Ali, Assistant Engineer PMU, (Water Supply), Mirpur.
  12. Tajmal Hussain Awan, Assistant Engineer Public Health Engineering Division, Muzaffarabad.
  13. Qasi Irshad Ahmed, Assistant Engineer Highways Division Rawalakot, Azad Kashmir.
  14. Haseeb Anwar Abbasi, Assistant Engineer, attached at Secretariat C&W, Muzaffarabad.
  15. Kh. Tahir Rafique, Assistant Engineer Public Health Engineering Division Bagh.
  16. Muhammad Naseer Awan, Assistant Engineer Mechanical Machinery Maintenance, Sub Division Muzaffarabad.
- .... APPELLANTS

### **VERSUS**

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary, New Secretariat Muzaffarabad.
2. Secretary Services and General Adminstrating department, Azad Govt. of

- the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
3. Secretary Communication and Works, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
  4. Secretary Physical Planning and Housing, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
  5. Chief Engineer Highways (South), Azad Jammu & Kashmir, Muzaffarabad.
  6. Chief Engineer, Public Health Engineering department, Azad Jammu & Kashmir, Muzaffarabad.
  7. Chief Engineer Highways North, Azad Jammu & Kashmir, Muzaffarabad.
  8. Chief Engineer Housing and Physical Planning, Azad Jammu & Kashmir, Muzaffarabad.
  9. Additional Chief Secretary, Planning and development Department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
  10. Pakistan Engineering Council through its Secretary/Registrar Atta Turk Avenue East G-5/2, Islamabad.
  11. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.
  12. Sajjad Ahmed s/o Muhammad Siddique r/o Domunda Sangwall Khuiratta, Tehsil and District Kotli, Azad Kashmir.
  13. Khurrm Maqsood s/o Maqsood Ahemd Awan r/o Chella, Tehsil and District, Muzaffarabad.
  14. Syed Imran Ali Shah s/o Syed Azad Hussain Shah r/o Subri, Tehsil and District Muzaffarabad.
  15. Naeem Ahmed s/o Noor Muhammad r/o Bhial (Bttai) Khuiratta, Tehsil and District Kotli.
  16. Muhammad Liaqat s/o Jan Muhammad r/o Palain, Tehsil Sehnsa District Kotli.

17. Adnan Ali Kasher s/o Muhammad Bashir r/o Khuiratta Tehsil and District Kotli.
18. Muhammad Asim s/o Mushtaq Ahmed r/o Gorian Sukh Chainpur, Tehsil and District Mirpur.
19. Waseem Raza r/o village Hazari, Tehsil Samahni District Bhimber.
20. Qadeer Ahmed r/o Bandala Cantt. Tehsil Samahni, District Bhimber.

..... RESPONDENTS

21. Muhammad Irshad, Assistant Engineer B-17, Highways Division Bagh.
22. Zaffar-ul-Haq Kiani, Assistant Engineer B-17, Public Health Engineering Sub Division Kahuta.
23. Arshad Javed Kazafi, Deputy Director B-18 MDHa Dam Mangla Housing Authority Mirpur.
24. Qazi Saleem Ahmed, Assistant Engineer B-17, Highways Division Sudhnooti.
25. Abid Hussain Awan, Assistant Engineer B-17, Public Health Engineering Division, Muzaffarabad.
26. Chaudhry Muhammad Shoukat, Assistant Engineer B-17, Highways Division Neelum.
27. Shafique Mehmood Qureshi, Assistant Engineer B-17, office of the Chief Engineer Building (North) Muzaffarabad.
28. Asif Asad-Ullah, Engineer B-17, Highways Division Rawalakot.
29. Shoukat Ali, Assistant Engineer B-17, Highways Division Sudhnooti.
30. Chairman National Technology Council (NTC), HRD Complex, Sufi Tabasum Road Islamabad (code 46000).
31. Convener Ali, Engineering Technologies Society c/o National Technology Council (NTC), HRD Complex, Sufi Tabasum Road Islamabad (code 46000).

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 30.11.2016 in Writ Petition No. 468 of 2009)

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FOR THE APPELLANTS: Mr. Muhammad Yaqoob  
Khan Mughal, Advocate.

FOR THE RESPONDENTS: Raja Muhammad Hanif  
Khan, Sardar Muhammad  
Habib Zia, Muhammad  
Maqsood Sulehria, Fiaz  
Ahmed Janjua, Advocates  
and Raza Ali Khan,  
Advocate General.

*Date of hearing:* 14.2.2018.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeals by leave of the Court arise out of the judgment dated 30.11.2016 passed by the learned High Court in writ petition No. 468 of 2009. As both the appeals raise common questions of facts and law, hence, were heard together and are being decided as such.

2. The precise facts forming the background of the captioned appeals are that Sajjad Ahmed and others, (respondents) the Graduate Engineers, filed a writ petition before the Azad Jammu & Kashmir High Court on 8.4.2009 with the following prayer:-

“PRAYER

Under the circumstances it is respectfully prayed that by accepting the instant writ petition the amended Rules enforced through Notification dated 22.3.1999 and through Notification dated 26.9.2003 regarding the post of Assistant Engineer B-17 in Public Works Department may very kindly be set aside by which quota of initial recruitment has been curtailed from 75% to 65% may kindly be declared illegal being against the law and natural justice. It is further prayed that the respondents may kindly be restrained from framing the Rules regarding the post of Assistant Engineer B-17 in contrary to the Pakistan Engineering Council Act, 1976 which has been adopted in Azad Jammu & Kashmir through notification dated 29.3.1986. Any other relief which this Hon'ble Court deems proper may also be granted to the petitioners.”

The precise case of the petitioners, respondents, herein, is that they are B.Sc. Engineers duly registered with Pakistan Engineering Council. It was stated that the Government of the Azad Jammu & Kashmir has regulated the services of the employees of Public Works Department by enacting the rules known as “Azad Jammu & Kashmir Public Works Department Service Rules, 1992. Under these rules, 75% quota was fixed for initial recruitment, whereas, 5% was



reserved for promotion on the basis of seniority-cum-fitness from amongst the Sub-Engineers having not less than 8 years' service and possessing qualification prescribed for initial recruitment. 20% quota by promotion on the basis of seniority-cum-fitness from amongst Sub-Engineers of the requisite discipline, who held the minimum qualifications prescribed for initial recruitment as Sub-Engineers and have completed 10 years' service as Sub-Engineers in the department and have been placed in B-16, after passing the Sub-Engineers professional examination. It was stated that the Government has amended these Rules firstly in the year 1999 by curtailing the quota reserved for initial recruitment from 75% to 65% and enhanced the promotion quota of Sub-Engineers from 5% to 10% vide notification dated 22.3.1999 without any justification and cogent reasons by depriving the fresh Graduate Engineers of their right of induction in service. It was claimed that later on further amendment has been effected in

the rules (supra) vide notification dated 26.9.2003, whereby the Rules have been again amended and the quota for promotion was further increased. The case of the petitioners/respondents, herein, was that the amendment in the Rules vide notifications dated 22.3.1999 and 26.9.2003 has been effected in gross violation of Pakistan Engineering Council Act, 1976. The amendment is also mala-fide because the same has been effected in order to give undue benefit to the diploma holders engineers having B.Tech. (Honours) qualification. It was claimed that the person who is in possession of B.Tech. (Honours) qualification is not a qualified engineer and his status is not equal to B.Sc. Engineer as B.Tech. (Honours) Engineers are not registered with the Pakistan Engineering Council. In this way, the respondents have tried to block the induction of the B.Sc. Engineers in service. The petitioners prayed that the notification dated 22.3.1999 and 26.9.2003 may be declared illegal, unlawful and

against the principle of natural justice being contrary to the Pakistan Engineering Council Act, 1976 as has been adapted in the Azad Jammu & Kashmir vide notification dated 29.3.1986. The writ petition was contested by the non-petitioners before the High Court, by filing separate written statements. In the written statement filed on behalf of non-petitioners No. 12, 13, and 15 to 20, it was pleaded that the petitioners have no locus-standi to file the instant writ petition. It was further stated that as the amendment was effected in the year 1999 and 2003, respectively and the petition has been filed after a period of ten year, hence, the same suffers from laches. It was further pleaded that some necessary parties have also not been impleaded. The non-petitioners negated the claim of the petitioners by stating that Pakistan Engineering Council Act is applicable to the professional Engineers and consultant Engineers, who are practicing and not the persons who are working in the government

departments, autonomous bodies, local authorities and private firms and companies. It was further pleaded that the Government has amended the rules in the year 1999 through which 10% quota has been fixed for those Sub Engineers who have improved their qualification during service. It was further stated that vide notification dated 26.9.2003, the quota has been further enhanced to 15% for Sub Engineers who are in possession of the qualification of BE/B.Sc./AIM and B.Tech. (Honours) in the relevant discipline. The Government has got the right to frame rules, therefore, the petitioners cannot call in question the framing of the rules on any account. After necessary proceedings and hearing the parties, while accepting the writ petition, the learned High Court through the impugned judgment has issued the following direction:-

“Nutshell of the above discussion is that Public Works Department of Azad Jammu & Kashmir has already moved for revival of Departmental

Rules of the year 1992 in the original shape. The Government is, therefore, directed to dispose of the summary within a reasonable time. The writ petition is disposed of in the manner that the private non-petitioners or the others holding B.Tech. (Hons) diplomas are not entitled to be assigned Professional Engineering Works. They can, however, be promoted in accordance with the prevailing rules against the post which do not involve Professional Engineering Works.”

Feeling aggrieved from the aforesaid direction, appeal No. 152 of 2017 has been filed by the appellants, herein, who were impleaded as respondents before the High Court, whereas, appeal No. 251 of 2017 has been filed by Ishtiaq Ahmed and others, appellants, herein, who were not party before the High Court. They claimed that their service rights have been affected due to the impugned judgment, hence, they are aggrieved persons.

3. Barrister Humayun Nawaz Khan, the learned Advocate appearing for the appellants,

in appeal No. 152 of 2017, vehemently argued that the judgment passed by the learned High Court is erroneous, capricious and illegal because the writ petition was filed before the High Court by the non-aggrieved persons, hence, not entitled to any relief. The learned Advocate argued that even otherwise, in the basic notification dated 17.2.1992, 5% quota was fixed for the Sub-Engineers who improved their qualifications during service, therefore, the subsequent amendment cannot be challenged/struck down. The learned Advocate argued that the qualification of B.Tech. (Honours) has been declared at par with B.Sc. Engineering, therefore, it cannot be said that no professional work can be assigned to them while performing their duties. The learned Advocate argued that the rules making powers vest in the Government on the strength of section 23 of the Civil Servants Act, 1976, hence, the Pakistan Engineering Council Act, 1976 as has been adapted in the Azad Jammu & Kashmir has

nothing to do with the powers of the Government regarding framing of rules. The learned Advocate argued that rules cannot be framed by the Government at behest or on the choice of a party. He further argued that the rules can be struck down by the High Court if these are found against the fundamental rights/ Constitution Act or framed in violation of the provisions of the parent Act. He argued that the rules cannot be struck down for having been framed in contravention of any of the provisions of the Pakistan Engineering Council Act. The learned Advocate further argued that the impugned judgment is against the record because no summary was placed before the High Court on the basis of which the direction has been given in the impugned judgment. The learned Advocate placed reliance on the cases reported as *Fida Hussain vs. The Secretary, Kashmir Affairs and Northern Affairs Division, Islamabad and another* (PLD 1995 SC 701), *Saif Din Shah and 6 others vs. Muhammad Hanif*

*Khan and 10 others* (2014 SCR 816), *Molvi Abdul Latif Qari (Qadri) and 366 others vs. Azad Government and 4 others* (2014 SCR 1104) and *Azad Government & 4 others vs. Shezad Naseem Abbasi* (2006 SCR 396).

4. Conversely, Raja Muhammad Hanif Khan, the learned Advocate appearing for the respondents in both the appeals, argued that the appeal filed on behalf of Ishtiaq Ahmed Qureshi and others is not maintainable because they are not aggrieved from the impugned judgment passed by the learned High Court. He argued that the appellants, in this case, were promoted to the posts of Assistant Engineers prior to the impugned judgment dated 13.11.2016 and they have been promoted in the light of the existing rules, therefore, the matter of their promotions has become past and closed transaction. He further argued that the appellants have relied upon the earlier judgments passed by the learned High Court in writ petitions No. 518 of 2012 and 87 of 2013, wherein a direction was



issued by the High Court for consideration of the case of the petitioners in accordance with law. He submitted that these judgments are not relevant at all. The learned Advocate argued that Pakistan Engineering Council Act, 1976 has been adapted in the Azad Jammu & Kashmir and no authority including the Government can frame any rule or appoint any person in the service in connection with the engineering work, against the Act. The learned Advocate argued that as the quota fixed for direct recruitment was curtailed by amending the rules and the respondents are Graduate Engineers, their right of induction in the service on the basis of 75% quota as fixed in the original rules has been curtailed, hence, it cannot be said that they are not aggrieved and their writ petition was not maintainable on this score. The learned Advocate argued that the case of the official respondents before the High Court was that they intends to modify the Rules in accordance with

the basic notification and the direction has rightly been issued by the High Court.

5. Sardar Muhammad Habib Zia, Muhammad Maqsood Sulehria and Fiaz Ahmed Janjua, the learned Advocates appearing on behalf of other respondents have also adopted the arguments advanced by Raja Muhammad Hanif Khan, Advocate.

6. Mr. Muhammad Farooq Malik, the representative of Chairman National Technology Council (NTC) has contended that as the B.Tech. education has been declared and reorganized equivalent to B.Sc. Engineering, therefore, it cannot be said that B.Tech. (Honours) and other equivalent qualification holders are not entitled to be promoted or serve in the service of the Government. He referred to and relied upon some cases, which need not to be discussed.

7. Mr. Muhammad Yaqoob Khan Mughal, the learned Advocate appearing for the appellants in appeal 251 of 2017, vehemently argued that the appellants are in possession of

B.Tech. (Honours) qualification, which has been recognized at par with B.Sc. Engineering, therefore, they have rightly been promoted on the recommendations of the respective Selection Board by the competent authority. He argued that they have not been impleaded in the line of respondents before the High Court, therefore, the impugned judgment is violative of law for having been handed down in absence of necessary party. The learned Advocate further argued that the case law referred to and relied upon by the learned Judge in the High Court supports the contention of the appellants/his clients. The impugned judgment is self-contradictory, hence, is not sustainable.

8. Mr. Raza Ali Khan, the learned Advocate General, while adopting the arguments of Raja Muhammad Hanif Khan, the learned Advocate for the respondents has further submitted that the Government has the prerogative to frame, amend or rescind the rules at any time and this prerogative of the

Government cannot be curtailed on the strength of any enactment even otherwise.

9. We have heard the learned Advocates representing the parties and gone through the record of the case with utmost care. The first question which needs resolution is; as to whether the petitioners/respondents have locus-standi to challenge the vires of the impugned Rules? The question of locus-standi remained a point of debate in various cases and the consensus is that the jurisdiction of the High Court can only be invoked by a person whose interest has been adversely affected by the legislation or order under challenge, otherwise, he is not entitled to file a writ petition except the writ of habeas corpus and writ of quo warranto. This view has been taken by this Court in *Raja Iqbal Rashid Minha's* case (PLD 2002 Supreme Court (AJ&K)1), wherein at page 11, this Court has observed as under:-

“14 It may also be pointed out that there is a wide difference between a writ of certiorari and a writ of habeas

corpus or a writ of quo warranto. Except the writ of habeas corpus and the writ of quo warranto which can be invoked by any person, the other writs can be prayed for only by an aggrieved person. It may be stated generally that an aggrieved party is one in a writ of prohibition whose rights are threatened, in writ of mandamus whose rights are being denied and in writ of certiorari whose rights have been affected by a decision. The word "right" is not used herein strict juristic sense. It is sufficient if the person alleging to be an aggrieved has a personal interest in the performance of a legal duty which if not performed would result in the loss of some personal advantage. A party who stands to lose or gain an advantage by observance or non-observance of law is an aggrieved party. A person aggrieved must be a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something or wrongfully affected his title to something. The petitioner being not falling in any of categories,

mentioned above, had no competence to lodge either the writ petition or an appeal in this Court against the impugned judgment of the High Court.”

In the case reported as *Noor-ul-Amin, Bar-At Law vs. The Government of the State of Azad Jammu & Kashmir through its Chief Secretary and 2 others* (PLD 1987 Azad J&K 88), 7<sup>th</sup> amendment introduced in the Azad Jammu & Kashmir Interim Constitution Act, 1974 was challenged by the petitioner, who was a member of the legal fraternity. A full bench of the Azad Jammu & Kashmir High Court after considering the question of locus-standi of the petitioner, therein, observed that the jurisdiction conferred on the High Court under section 44 of the Azad Jammu & Kashmir Interim Constitution Act is subject to certain restrictions and limitations. One of those is that for redressal of the grievance brought before the High Court, no other adequate remedy provided by law is available to the petitioner and secondly, that a

relief is sought by an aggrieved person. The learned full bench of the High Court after giving due consideration to the phrase “aggrieved person” in paragraphs No. 6 and 7 observed as under:-

“6. In present case, the alleged grievance is to be redressed in the light of the provisions contained under subsection (2)(a)(ii) of section 44. Thus, it is imperative that before laying hands on merits of the proposition under consideration, to ensure and satisfy that the petitioner is an aggrieved party as contemplated under the Constitution. The petitioner is a citizen of Azad Jammu & Kashmir and an Advocate. He claims his designation as Chairman of the Foreign Relations Board of Jammu and Kashmir Liberation League. It is alleged that the aforesaid facts qualify him as an aggrieved person as contemplated under the Constitution, as such, he is competent to challenge the vires and propriety of the impugned amendment of the Constitution. He has demonstrated his grievance by describing himself as a disgruntled

subject, disillusioned elector and an extremely disenchanted office-bearer of a political party.

7. Ordinarily, an aggrieved person is he who suffers a grievance by loss of any interest of right in sequence of an act or omission caused by an order, decision or action of a tribunal or authority or person. The term “aggrieved person” received attention of the superior Courts of the Sub-continent in various cases from time to time. The consensus is that a person is deemed as “aggrieved person” when he satisfies that he suffered loss or the curtailment of a privilege or right in consequence of non-performance of duty.”

In a recent case reported as *Raja Muhammad Waseem Khan and others vs. Azad Government and others* (2017 SCR 623), the question of locus-standi of the petitioners, therein, has been considered and in the circumstances of that case, it has been observed as under:-

”14- جہاں تک مسئولان کا یہ عذر کہ ایپلانٹان رنجیدہ افراد کے ذمہ میں نہ آتے ہیں ہماری رائے میں معاملہ کی نوعیت کے پیش نظر قابل پذیرائی نہ ہے۔ یہ عدالت اپنے کئی فیصلوں میں فرار دے چکی ہے کہ رنجیدہ شخص کی حیثیت کے تعین کے لیے معاملہ کی نوعیت اور طلبیدہ داد رسی بہت بنیادی امور ہیں۔ معاملہ ہذا میں مفاد عامہ اور قانون کی عملداری زیر نزاع ہے۔ ہر وہ ریاستی باشندہ جو اسسٹینٹ کمیشنر کی براہ



راست تقرری کے لیے مطلوبہ تعلیمی معیار اور دیگر شرائط پر پورا اترتا ہے وہ براہ راست کوٹہ سے بانچہ اسامیوں کی ترقیاتی کوٹہ میں منتقلی کی بنا پر رنجیدہ شخص کی تعریف میں آتا ہے کیونکہ وہ ان اسامیوں کے منتقل ہونے سے مقابلہ کے امتحان میں شرکت کے اپنے حق سے محروم کر دیا گیا ہے۔

15۔ اسی طرح مقدمہ کی نوعیت کے مطابق ہر سال اسامیوں کو پبلک سروس کمیشن میں انتخاب کے لیے نہ ارسال کیے جانے سے بھی سنگین اور بھیانک نتائج مرتب ہوتے ہیں۔ ہر سال ریاستی باشندے اپنی صلاحیتوں کی بناء پر مختلف اسامیوں کے لیے اہلیت حاصل کرتے ہیں اور یہ ان کا بنیادی حق ہے کہ جس اسامی کے خلاف مقابلہ کے لیے وہ اہلیت رکھتے ہیں اس کے خلاف ان کو امتحان میں شرکت کا موقع دیا جائے۔ اور اگر وہ اسامی بروقت مشتہر نہیں ہوتی تو یہ امر بلا واسطہ کئی کئی سال تک روکے رکھنے اور مشتہر نہ کرنے سے کئی افراد قانون میں مقرر حد بالائی عمر کو عبور کرنے کی زد میں آجاتے ہیں اور وہ بدوں کسی قصور کے اپنے حق مقابلہ سے محروم ہو جاتے ہیں۔“

Now we proceed to attend the objection in light of the referred case law and pleadings of the parties. In the present case, the original Rules, which were framed by the Azad Jammu & Kashmir Government in the year 1992 in which 5% quota admittedly was reserved for the diploma holders who improved their qualifications while remaining in service, have not been challenged by the petitioners. They have only challenged the amendment effected in the rules firstly in the year 1999 and secondly in the year 2003. Our contemplate perusal of the writ petition filed before the High Court reveals that not a single sentence has been mentioned in the writ petition that at that time when the

rules were amended in the year 1999 and later on in 2003, the petitioners were in possession of the requisite qualification prescribed for initial recruitment. They acquired the degree of graduation much after the enforcement of the Rules, hence, we are of the considered view that they cannot challenge the Rules in vacuum until and unless their any existing right is infringed due to enforcement of the Rules, therefore, they were not aggrieved persons and their writ petition before the High Court was not maintainable. Even on merits, the petitioners-respondents have no case. Raja Muhammad Hanif Khan, the learned Advocate appearing for the respondents in his written arguments has admitted that the appellants in appeal No. 251 of 2017 have been promoted before passing the impugned judgment, therefore, their promotions will not be affected. We are of the opinion that the learned Advocate has rightly admitted the position because the past and closed transaction cannot

be reopened specially so when the affected persons were not party before the High Court.

10. The question as to whether B.Tech. Engineers can be inducted or promoted in the higher scales and can be assigned the professional work, has been a bone of contention. The first case in which the controversy arose was *Muhammad Azim Jamali and 11 others vs. Government of Pakistan, through Secretary/Chairman, Ministry of Railways, and 33 others* (PLJ 1992 Karachi 1). The referred case was heard by a division bench of Karachi High Court consisting of Ajmal Mian (Then Chief Justice) and Qaiser Ahmed Hamidi, Judge (the other learned member). The difference of opinion arose between the learned members of the bench. According to Ajmal Mian (Then C.J) the provisions of the Pakistan Engineering Council Act are applicable to the Engineers who are either practicing as Professional Engineers or Consultant Engineers as such the provisions of the Act are not

applicable to the persons with the engineering qualification employed in Railway as Engineer, Assistant Engineer or any other capacity connected with any engineering work, whereas, in view of the other learned member of the bench, the provisions of Pakistan Engineering Council Act, would apply to all the persons who are either practicing as Professional Engineers or Consultant Engineers or employed in any government department or any private organization as the engineers are entrusted the duty to look-after the work comes in the definition of the professional engineering work. The matter was referred to Mr. Saeeduzzaman Siddiqui, C.J. (as is lordship was then)), who after giving due thought to the provisions of the Pakistan Engineering Council Act, at page 12 of the report observed as under:-

“A careful reading of Sub-sections (1) and (2) of Section 27 of the Act will show that the penalties prescribed in the section are attracted only against those persons who are not registered under the Act but undertake any professional

engineer work as defined in the Act. Similarly, the person who employs a person who is not registered under the Act, on a professional engineer work, is equally liable for punishment under the Act. The above provisions are wide enough to include the cases of those persons who may be employed in any private or Governmental organization and are called upon to undertake any professional engineer work. The provisions of the Act, regarding registration of professional engineer and consulting engineer therefore, in my view, would not be applicable to the persons serving as engineer with the Railways, as in course of their such employment they neither act as “professional engineer” nor as consulting engineer’. However, if such persons undertake any professional engineer work as defined under the Act, then the provisions regarding registration under the Act will be attracted and they could also be punished in accordance with the provision of Section 27 of the Act for violating the provisions of the Act.”

The judgment of the Karachi High Court was challenged before the apex Court of Pakistan and the findings of the Referee Judge was approved through judgment reported as

*Pakistan Diploma Engineers Federation (Registered) through its Chairman vs. Federation of Pakistan through Secretary, Ministry of Water and Power, Government of Pakistan Islamabad and 9 others (1994 SCMR 1807)*

A development has taken place after the aforesaid judgment. The B.Tech. Engineers have been declared equivalent to B.Sc. Engineers and they have been declared eligible for further promotion as has been held by the apex Court of Pakistan in *Fida Hussain's* case (PLD 1995 Supreme Court 701). In para 9 of the report, it has been observed as under:-

“9. In this regard, we may point out that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant/employee is sufficient for promotion from one Grade to another higher Grade and whereas it is in the domain of the Pakistan Engineering Council to decide, as to whether a particular academic qualification can be equated with another academic

qualification, but it has no power to say that the civil servants/employees holding particular academic qualifications cannot be promoted from a particular Grade to a higher Grade. The main object of the Act as pointed out by one of us (Ajmal Mian, J.) and Saiduzzaman Siddiqui, C.J. (as he then was) in the above High Court judgment is to regulate the working of professional engineers and consulting engineers and not to regulate the qualifications or the working of the engineers in the Government or Semi-Government departments.”

Again the apex Court in para No. 13 of the report held as under:-

“13. We may again observe that it is exclusively within the domain of the Government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy. However, it cannot abdicate its power to decide the above question in favour

of a corporate body which is not in its control nor it can act in a manner which may be violative of Article 25 of the Constitution on account of being discriminatory. It is still open to the Government for future to provide that academic qualification of B.Tech. (Honours) will not be considered sufficient for promotion from BPS-16 if the same does not violate the above principle.”

11. There is force in the submission of Barrister Humayun Nawaz Khan, the learned Advocate for the appellants that the rules can be declared illegal if they are enacted in violation of the parent Act or offend any provision of the Constitution and not otherwise. In Azad Jammu & Kashmir, the Government is authorized to regulate the terms and conditions of persons in the service of AJ&K under section 49 of the Azad Jammu & Kashmir Interim Constitution Act, 1974. For carrying out the purpose of the aforesaid provisions of Act, 1974, the AJ&K Civil Servants Act, 1976 has been enacted by the Legislative Assembly. Under section 23 of the



said Act, the Government is empowered to make rules for carrying out the purpose of the Act, therefore, this power of the Government cannot be curtailed by any other enactment. We may refer here the cases reported as *Ch. Muhammad Insha Ullah and others vs. Chief Conservator of Forests (P&E) Punjab and others* (PLD 1988 SC 155) and PLD 1987 SC 172 on the point.

12. Before parting with the judgment, we may observe that a direction, in this case, has been issued by the learned Judge of the High Court, which on the face of it, is contradictory and in the absence of any summary or proposal available on the record. If the Government intends to amend, rescind or frame rules/policy for service, it has vast powers within the frame work of Civil Servants Act, 1976 to do so.

The nutshell of the above discussion is that the appeals are accepted and the writ petition before the High Court is dismissed.

No order as to costs.

JUDGE

JUDGE

Muzaffarabad.  
... .3.2018.